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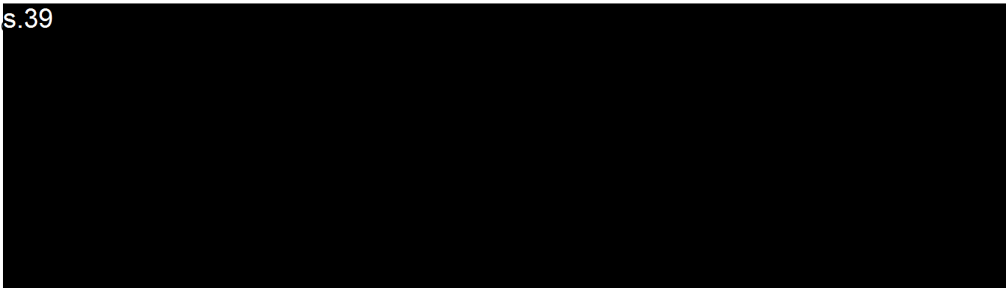
MEMORANDUM FOR THE PRIME MINISTER

**REVOKING THE DECLARATION OF THE PUBLIC ORDER EMERGENCY
UNDER THE *EMERGENCIES ACT***

(Decision Sought)

SUMMARY

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- Overall the situation has evolved significantly since February 14, 2022, and is no longer considered urgent and critical, or a threat to the security of Canada that is so serious as to be a national emergency – the requirements for declaring a public order emergency under the EA. The threat assessment has been revised as follows:
 - Participants of unlawful protests have been dispersed from the downtown Ottawa area and targeted ports of entry (POEs). The potential for future blockades and demonstrations in Ottawa, POEs and other areas such as other critical infrastructure continues to be monitored.
 - Temporary EA measures to freeze funds that have been raised for unlawful protests were effective in restricting the ability of organizers and participants to continue their unlawful protests.
 - The assessment of foreign influence remains low.

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- Based on the revised threat level and advice from the Royal Canadian Mounted Police (RCMP), the current situation is considered stabilized and within law enforcement and government's existing authorities and capacity to manage. Specifically:
 - Federal, provincial and municipal law enforcement agencies have confirmed that their existing authorities and capacity are sufficient to address the reduced threats. Police continue to monitor convoy movements and social media traffic. Police agencies assess that existing authorities will be sufficient to address any further attempts to retrench unlawful protests. The authority provided under the EA to compel tow trucks to help with law enforcement intervention is no longer deemed necessary. The risk of foreign interference is considered low.
 - The temporary economic measures proved to be very effective and while the frozen funds will be released once the EA is revoked, governments and law enforcement continue to monitor suspicious transactions under existing authorities and will signal illegal activities to the appropriate law enforcement. It is important to note that the Minister of Finance is currently exploring the possibility of making permanent some of the economic measures included in the temporary EA regulations due to the continued risk related to these types of activities in future instances and may seek your concurrence on a proposal moving forward.

Parliamentary Process

- The Parliamentary process is well underway to confirm the proclamation and related regulations. The House of Commons (HoC) adopted the motion on February 21, 2022, while the Senate has started the debate and is expected to vote at the latest on Friday, February 25, 2022. A separate motion signed by a minimum of 20 members of the HoC has been filed in the HoC to revoke the declaration of emergency. A similar motion may be presented in the Senate, if supported by a minimum of 10 Senators. Those types of motions for revocation must be considered within three sitting days after they are filed. Should the Governor in Council revoke the declaration before all necessary votes are held, the motions to confirm

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or revoke the proclamation would have no effect on the declaration since it would no longer be in force.

- When a motion to confirm a declaration of a public order emergency is moved in the Houses of Parliament, it is in the possession of the House and may only be withdrawn from the Order Paper with unanimous consent. If there is no agreement to withdraw the motion and there is a desire to continue the debate on the motion, the Government Representative in the Senate could attempt to amend the motion to make it an expression of the House and recognize that the declaration of a public order emergency has been revoked.
- Revocation of the public order emergency would also automatically revoke the related regulations that were put in place to implement the temporary emergency measures. These temporary measures would in turn also no longer be available to be used as authorities. Lawful authority exercised under the declaration is not retroactively revoked, however, and so the exercise of powers conferred under the declaration while the regulations were in force would still be lawful. Any offences committed while the declaration and regulatory measures were in force may still result in charges, prosecution and conviction.

Other Requirements under the EA

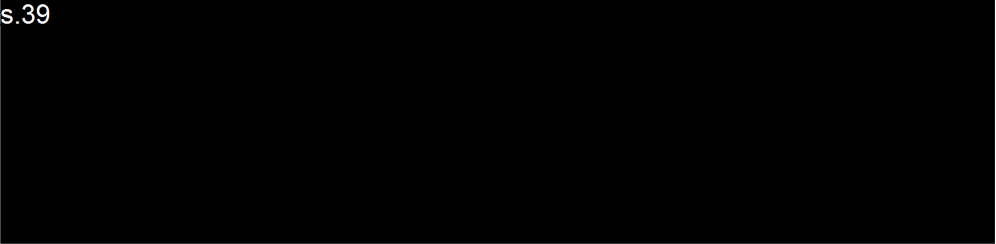
- Notwithstanding the revocation of the declaration, Parliament would still be required to establish the Parliamentary Review Committee. This committee has a broad mandate to examine the exercise of powers and the performance of duties and functions pursuant to a declaration of emergency (section 62 of the EA). The committee must report to each House within seven sitting days of the revocation of the declaration by the Governor in Council.
- In addition, the Governor in Council must, within 60 days of revocation, cause an inquiry to be held into the circumstances that led to the declaration being issued and the measures taken to deal with the emergency (section 63 of the EA). You will be briefed on the next steps of this inquiry under separate cover.

Next steps

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- PCO will continue to work to support the inquiry into the circumstances that led to the declaration of the public order emergency and the measures taken to deal with the emergency and will work with Justice and Public Safety to support the work of the Parliamentary Review Process.
- Authorities continue to monitor the situation and will provide updates to you and your office as deemed necessary and should the situation escalate.
- **Do you agree?**

Background

On February 14, 2022, the Governor in Council approved the declaration of public emergency order and two sets of measures were put in place on a temporary basis to address the threat related to the “Freedom Convoy 2022”: the *Emergency Measures Regulations* (EMR) and the *Emergency Economic Measures Order* (EEMO). The measures included:

Emergency Measures Regulations

- Prohibition of public assemblies that may reasonably be expected to lead to a breach of the peace by disruption of movement of persons or goods, serious interference with trade or the functioning of critical infrastructure, or supporting threats of violence or acts of violence against persons or property;
- Prohibition on causing a minor to participate in such an assembly;

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- Prohibition on traveling to or within such an assembly or a place where an assembly is reasonably expected to take place;
- Prohibition on directly or indirectly using, providing, making available, or inviting a person to provide property to or for the purpose of benefitting persons participating in or facilitating such an assembly;
- Prohibition on foreign nationals entering Canada with the intent to participate in or facilitate such an assembly;
- Designating and securing protected places to allow preventive or protective measures to be taken to secure them, such as borders, approaches to borders, other critical infrastructure, and Ottawa;
- Directing persons to provide essential goods and services for the removal, towing and storage of any vehicle, equipment, structure or other object that is part of a blockade on request;
- Measures enabling the RCMP, municipal and provincial police services to enforce the Emergency Measures Regulations and any provincial or municipal laws without requiring officers to be sworn in, which allows for the assistance of outside police officers in a much less administratively burdensome way than would be otherwise be the case; and
- The imposition of fines or imprisonment for contravention of any order or regulation made under section 19 of the EA.

Emergency Economic Measures Order

- Measures directing financial service providers to disclose the existence of property that they have reason to believe is owned, held or controlled by or on behalf of individuals or entities that are involved in the blockades and any information about transactions or proposed transactions about such property to the RCMP or the Canadian Security Intelligence Service (CSIS);
- Measures directing financial institutions to take immediate steps to temporarily restrict access to funds to (or for the benefit of) those involved in the blockades, to cease to provide services to (or for the benefit of) any person or entity involved in the blockades, not to facilitate any transaction relating to funds or virtual currency, and not

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offer any financial service or provide any funding, including virtual currencies, to anyone involved in the blockades;

- Measures requiring crowdfunding platforms and payment service providers to register with FINTRAC and report any suspicious and large value transactions to FINTRAC; and
- Measures enabling government (federal, provincial or territorial) institutions to disclose information to entities that are subject to the obligation to freeze accounts (cease dealings) where the disclosing institution is satisfied that the disclosure will contribute to the application of the EEMO.
- Since the EA was invoked, the regulations resulted in:
 - The rapid assembly of a large police presence for the operation in Ottawa;
 - Signaling to protestors that the trucks used to blockade borders and cities would no longer be treated as violations of parking bylaws, but would entail potentially serious penalties, where certain criteria were met;
 - Putting protestors on notice of the specific intention to protect critical infrastructure and trade;
 - A significant decrease in the number of minors that were present in the unlawful assembly in downtown Ottawa;
 - Enabling law enforcement and border agents to intercept convoys headed to Ottawa or other protest sites and warning drivers of the prohibition;
 - Restricting travel to or within an area where a prohibited assembly was taking place;
 - Restricting the re-provisioning of food and fuel to protestors;
 - The designation of protected places;
 - Private operators providing tow truck services to the police; and
 - The freezing of 219 financial products, the disclosure of 57 entities and addresses of 253 Bitcoin shared with virtual currency exchangers, and the proactive freezing of the account of a payment processor for a value of \$3.8 million by a financial institution.

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- As of February 21, 2022, the operational status is described as follows:
 - All POEs are currently open and operating normally. There are gatherings of trucks close to four POEs but, to the extent they are protesting, activities are non-violent and legal. The movement of people and goods is not being impeded at the moment. The Canada Border Services Agency (CBSA) assesses each of these situations to be within the ability of the police of jurisdiction to manage – meaning that these protests are not expected to interfere with POE activity. That said, there is recognition that as recently as February 19, 2022, protestors were able to disrupt operations at the Pacific Highway POE, which lasted approximately 24 hours.
 - Movement of truck convoys continues to be monitored with particular notice being paid to staging areas in Embrun, Metcalfe and Vankleek Hill, all near Ottawa. A groups of trucks originating from Sherbrooke, Quebec, appears to be moving toward the gathering area in Vankleek Hill. The RCMP assesses that these areas are under careful surveillance by the Ontario Provincial Police (OPP) and that an operational plan has been established to maintain security in Ottawa. The assessment is that any potential threat from this group of trucks to attempt a re-occupation or illegal blockade in Ottawa could be prevented by police of jurisdiction using existing (non-EA) enforcement authorities.
 - To date, approximately 30 individuals have attempted to enter Canada for the purpose of participating in illegal protests and blockades. The majority were prevented from entering Canada based on public health authorities. Two individuals were prevented using the EA measures. The likelihood of foreign nationals attempting to enter Canada to support illegal protests is currently assessed as low.
 - There is currently an unknown number of protestors remaining in Ottawa and the potential of this group to engage in illegal protests is difficult to assess. Since the end of the occupation of Ottawa's downtown core, small numbers (20-30) have gathered at the War Museum to protest. So far, these gatherings have been orderly, non-violent and legal.
 - The freezing of accounts has been assessed as having had a deterrent effect on protestors. Even once revoked, the immediate and high impact of the economic order will continue to remind protestors

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that effective steps have been and will be taken, as necessary, to prevent further illegal protests and blockades. It has been noted that an orderly revocation process, working in collaboration with financial institutions, could be in effect quickly (24 hours).

- Pursuant to section 58 of the EA, a motion to confirm the declaration of the public order emergency must be passed by both Houses of Parliament. On February 21, 2022, the motion was adopted in the HoC. The Conservative Party has since filed a motion to revoke the public order emergency pursuant to section 59 of the EA. Debate on this motion is possible if it is signed by 20 members of the HoC but is not required before three sitting days.
- The Senate is expected to debate the motion to confirm the emergency declaration from February 22 to February 25, at which point it is expected to vote on the motion, unless the debate collapses earlier. Depending on the outcome of the vote, Senate members could present a motion pursuant to section 59 of the EA to revoke the public order emergency similar to the one tabled in the HoC if it has the support of a minimum of 10 Senators.
- The Governor in Council may, by proclamation, revoke a declaration of a public order emergency either generally or with respect to any area of Canada, effective on such day as is specified in the proclamation (section 22 of the EA). This power is not affected by a confirmation made by the Houses of Parliament under section 58 or 59 of the EA.
- As of February 22, 2022, Canada has received two notices of application for judicial review (i.e., *Canadian Frontline Nurses et al v AGC*, T-306-22 and *Canadian Civil Liberties Association v AGC*, T-316-22), both in Federal Court. As these applications and any subsequent applications challenging the issuing of the public order emergency will involve similar issues, evidence and steps, the Attorney General of Canada (AGC) will seek joint case management.
- *Canadian Frontline Nurses et al v AGC*: On February 18, 2022, the Applicants served a Notice of Application seeking a declaration that the Governor in Council acted beyond its jurisdiction in declaring a public order emergency. The Applicants, an individual and a not-for-profit corporation of which the individual is a member, are supporters

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of the “Freedom Convoy” in Ottawa and claim to be present in Ottawa. The Applicants argue that the issuing of the public order emergency was unreasonable and beyond the jurisdiction of the Governor in Council, because there are no reasonable grounds to believe that an urgent and critical situation that seriously endangers the lives, health or safety of Canadians exists. They also argue that the public order emergency is contrary to the Canadian Bill of Rights, specifically, the right of individuals not be deprived of enjoyment of property except by due process of law, freedom of speech; and freedom of assembly and association, as well as section 2 of the *Charter of Rights and Freedoms* (Charter), which provides for expression, freedom of conscience, and association. They seek an interim motion, arguing that the public order emergency should be stayed because the individual applicant will suffer irreparable harm by being unable to express her political opinions, exercise her freedom of conscience, and peacefully assemble, and this harm is intangible and therefore irreparable.

Further, they allege that the “freezing” orders authorized by the public order emergency cause irreparable harm to the individual applicant by preventing enjoyment of her property and preventing her from accessing the necessities of life, which may harm her health. The Federal Court ordered the matter case managed. The Applicants sought an interim motion on an urgent basis, which was contested by Canada on the basis that the matter was not urgent. In a Case Management Conference held on Tuesday, February 22, 2022, the Court ordered that the Applicants’ stay motion will be heard on Friday, February 25, 2022. The AGC’s motion materials are due Thursday, February 24, 2022. The Canadian Civil Liberties Association, the Applicant in Court File T-316-22, will be permitted to bring a motion to intervene but will not be permitted to make submissions in the stay motion. The Court indicated that the two applications would likely be consolidated.

- *Canadian Civil Liberties Association v AGC*: On February 18, 2022, the Applicant served a Notice of Application seeking to set aside the proclamation and the related regulations. In the application it states that certain provisions of the regulations are inconsistent with the Charter. It also seeks an expedited hearing. A case management

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conference will be schedule to discuss next steps. The hearing of the application is scheduled for Wednesday, February 23, 2023.

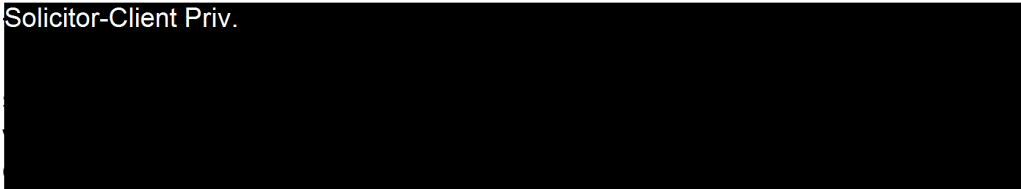
- Additional challenges from the Canadian Constitutional Foundation and the Justice Centre for Constitutional Freedoms (the right wing advocacy centre providing legal support to the protester/occupiers) are anticipated. Furthermore, in the *Li* class action filed on behalf of Ottawa residents, the Ontario Superior Court granted a temporary *ex parte Mareva* injunction freezing the assets of certain individuals and entities involved in the unlawful protests and endorsed that this order should be served formally by the Attorneys General of Ontario and Canada in advance of the next return date of February 28, 2022, in case Ontario or Canada had any overlapping or priority interests in the underlying assets. Solicitor-Client Priv. Solicitor-Client Priv.

PCO Comment

- PCO is of the view that the public emergency order pursuant to the EA, which was invoked on February 14, 2022, is no longer required based on the most recent assessment of the threat level, and current operational status. PCO understands that law enforcement continues to monitor the situation and is ready to implement measures within its existing authorities and capacity to deter future unlawful and disruptive assembly and stop those that may be initiated, building on the collaboration that has been established under the EA. This includes:
 - Common law policing powers to keep the peace, prevent mischief, and to address unlawful assembly;
 - Continued monitoring of convoy movements to ensure early and effective intervention should any attempt to retrench illegal protests be undertaken;
 - Continued engagement through police liaison officers with protest participants to ensure that information is gathered on an ongoing basis;
 - Maintaining in the near and medium term an enhanced security posture in and around Ottawa, using both RCMP And OPP officers; and
 - Ongoing operational planning to maintain security of the sites of recent protests.

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- In addition, as long as the Ontario Emergency Order and the City of Ottawa's state of emergency continue to be in effect, this provides law enforcement with additional tools to manage the situation in the coming days and weeks.
- The Parliamentary process is well advanced. Once the public order emergency is revoked by the Governor in Council, the Government could attempt to amend the motion currently before the Senate to make it an expression of the House and recognize that the declaration of a public order emergency has been revoked. The revocation of the emergency declaration would pre-empt other requests in the House to revoke the declaration that would otherwise take up significant House time. The motion to confirm the declaration was adopted in the House with the support of the New Democratic Party, which has been clear that it expects the declaration of emergency to be revoked as soon as it is no longer necessary. All parties are expected to welcome the revocation, though it is expected that the Conservative Party of Canada and the Bloc Québécois will continue to criticize the Government for invoking it in the first place.
- Communications will demonstrate the progress achieved under the EA, reassure Canadians that the situation is stable and that law enforcement has the ability and tools to manage and prevent future resurgence. Communications from law enforcement will complement this messaging.
- Solicitor-Client Priv. 
- PCO has continued to engage provincial and territorial (PT) colleagues on the invocation and application of the EA, and will continue to do so through to its revocation. It is similarly recommended that targeted and timely calls be made to key jurisdictions, as well as communication at the officials level with all PTs.
- The "Freedom Convoy 2022" situation identified some gaps in the Government's and law enforcement's ability to better prevent, protect,

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and respond to illegal blockades of critical infrastructure, such as POEs and trade and transportation corridors. PCO will continue to work with implicated departments to identify lessons learned from the recent domestic situation, and potentially advance long-term or permanent solutions.

Approved electronically by
Janice Charette

Mainville/Proulx/Presutti/Setlakwe/Tupper/Drouin